Petition

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81-1403

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

SHANO FRANKLIN TAGE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the mail fraud statute as interpreted herein by the courts below contravenes the First Amendment's protection of commercial speech.

2. Whether Petitioner's constitutional right to trial by jury and the presumption of innocence was dissipated by the trial court's jury instruction on intent; and whether prejudicial remarks by the prosecutor asserting accusations not included in the indictment violated Petitioner's right to fundamental fairness.

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1. Whether the mail fraud statute as interpreted herein by the courts below contravenes the First Amendment's protection of commercial speech.

2. Whether Petitioner's constitutional right to trial by jury and the presumption of innocence was dissipated by the trial court's jury instruction on intent; and whether prejudicial remarks by the prosecutor asserting accusations not included in the indictment violated Petitioner's right to fundamental fairness.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on November 9, 1981. A petition for a rehearing, timely filed, was denied on December 21, 1981.

OPINION BELOW

The opinion of the United States Court of Appeals dated November 9, 1981 contains a legend "DO NOT PUBLISH"; it is set forth in the appendix *infra*. It affirmed a judgment of conviction of Petitioner for violation of 18 U.S.C. Sec. 1341 and 18 U.S.C. Sec. 2. Petitioner was tried in the district court by a jury and there is no opinion of the trial court.

JURISDICTION

The judgment of the United States Court of Appeals was entered on November 9, 1981. A petition for rehearing, timely filed, was denied on December 21, 1981.

Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the First and Fifth Amendments to the Constitution of the United States.

The statutory provisions involved are 18 U.S.C., Sec. 1341; 18 U.S.C., Sec. 2; Appendix *infra*.

STATEMENT OF THE CASE

Petitioner was convicted after a jury trial on charges of knowingly aiding and abetting mail fraud. Petitioner is a writer, publisher, and wholesaler, of copywritten books and brochures on mail order sales, and he conducted his business from San Francisco, California. Petitioner's principal book is a volume entitled "Insider's Guide to Mail Order Riches." The book, for which Petitioner had obtained a United States copyright, was a compendium and "how-to-do-it" book written for persons interested in beginning a business in mail order sales.

Postal authorities notified Petitioner in August, 1977 that they felt that the two-page promotional letter written by Petitioner could be construed by readers as an offer of employment at home. Petitioner ceased using the letter and began using instead a brochure with a single page covering letter. The language to which the postal authorities objected was deleted, and in addition, the brochure contained a legend, prominently placed, "This is not an offer of employment." Petitioner notified his dealers to cease using the former promotional letter.

The co-defendant, Clay Hubert Segrest, was engaged in mail order sales of one kind or another before commencing sales and promotions of Petitioner's publications. Segrest did business under the name and style of Habco Sales, in Lufkin, Texas. Segrest's only connection with Petitioner consisted of purchasing the publications and promotional material as a dealer. Segrest had been informed in August, 1977, as all dealers, to cease using the older promotional letter. He, however, continued to use the letter containing the objectionable language at least through November, 1977. In addition, although the promotional material expressly instructs dealers not to

advertise in periodicals under the "Help Wanted" classification, but rather under the "Business Opportunities" classification, Segrest placed ads in the "Help Wanted" columns of various periodicals around the country.

Each of the ten substantive counts of the indictment named a customer of Segrest who responded to his ads and pursuant thereto wrote for the promotional material and subsequently ordered from him Petitioner's publications. In nine instances the order and purchase price of $12.00 was mailed to Habco Sales in Lufkin, Texas, between October 13, 1977 and November 1, 1977. The person named in the remaining count mailed her order on March 10, 1978, payable to Habco Sales, as were the other nine.

During the opening statements, the indictment was read to the jury, including the conspiracy count and introduction to the indictment. At the close of the government's case, the trial judge gave a directed verdict of acquittal as to the conspiracy count, and certain material contained in the introduction was stricken. After deliberating 49 minutes, the jury returned verdicts of guilty on all ten counts as to both Segrest and Petitioner.

Thereafter, Petitioner was sentenced on each of the ten counts. Petitioner was sentenced to terms of 36 months on one count and 5 years each on 4 other counts. The terms were to run concurrently. These sentences were all suspended except for 6 months. Petitioner was sentenced to serve probation for five years commencing with the conclusion of his prison term. In addition, Petitioner was sentenced to pay a fine of $1,000 on each of five counts, and the fines were cumulative.

REASONS FOR GRANTING THE WRIT

I. The Court Of Appeals Below, Concluded Without Analysis That Petitioner's Promotional Materials Were Misleading. In Doing So, The Court's Affirmance Of Conviction Was In Direct Conflict With This Court's Rulings With Respect To The First Amendment Protection Of Commercial Speech.

In its haste to affirm Petitioner's conviction, the Court below failed to analyze or give any effect to the First Amendment protection covering commercial speech, enunciated by this Court in *Bates v. State Bar of Arizona,* 433 U.S. 350 (1977); and *Virginia Pharmacy Board v. Virginia Citizens Consumer Council,* 425 U.S. 748 (1976).

Petitioner took extraordinary efforts to avoid misleading any of his consumers. It was the government's contention, both at trial and during its argument to the Court of Appeals, that Petitioner intended to mislead the consumers into believing that they would be paid a wage by employers to work at home.

Throughout all of his publications, Petitioner continuously admonished his dealers not to advertise under the "Help Wanted" headings in classified ads. In several places in his publications, he affirmatively asserted that the proper place for the advertisement was in the section "Business Opportunities" or "Money-Making Opportunities." Subsequently, after discussing some of his publications with a postal inspector, who suggested that there was a possibility that readers could conclude the promotional material constituted an offer of employment, Petitioner revised his promotional materials. Thereafter,

in August, 1977, Petitioner included therein, in a prominent location, the following:

DON'T BE FOOLED

• • •

THIS IS NOT AN OFFER OF EMPLOYMENT.

Although Petitioner passed all this material on to his retailers and instructed them to cease using the older promotional material, co-defendant, herein, Segrest, ignored all of Petitioner's instructions, with respect to advertising under "Help Wanted," and the use of the promotional material that Petitioner discarded in August, 1977.

Although commercial speech may be dichotomized to reflect that which is truthful and nondeceptive and that which is false and misleading, the Court below concluded without analysis that Petitioner's promotion fell into the category of false and misleading.

Similarly, the Court below in failing to give appropriate deference and regard to the First Amendment protections herein, did not analyze the significance of the failure of the government to offer into evidence any standard or criteria for judging the misleading quality of the promotional material. To the same effect, the trial judge in charging the jury failed to instruct the jury with respect to the standards for distinguishing, on one hand, that which is truthful and nondeceptive and, on the other, that which is false and misleading. In any event, the burden of justification for restriction on speech and publication rests upon the government. "Thus a realistic definition of false and misleading advertising is needed which will protect the legitimate consumer interest in commercial information and, at the same time, enable the advertiser to develop ads which will be both informative

and acceptable."[1] Without such a standard, any advertiser must fear criminal prosecution, because an advertisement could or might be considered false and misleading. The effect of the fear could have a stifling effect on commercial speech, ". . . if the standard for judging false or misleading advertisements is so broad as to encompass what the advertisers justifiably deem to be truthful or in the realm of tolerated puffing."[2]

The standard, if any, by which the jury was to judge Petitioner's promotional material is not clear. There also remains the question whether the material was to be judged as a whole or whether each part thereof taken in isolation separately must be true. Similarly, the question of whose standard was to be the measure must be taken into consideration. While on one hand, some would establish the standard as that of the reasonable man, others would establish that of the average individual applying community standards.[3] Others would substitute the standard of the particularly susceptible type of individual. Use of the standard of the particularly susceptible individual might require that advertising which is clearly protected by the First Amendment be suppressed. Clearly this would be unconstitutionally restrictive of freedom of speech and press.

In recent decisions, efforts by the Federal Trade Commission to require corrective advertising to dispel the effect of advertising found to be false and deceptive have been adjudged as unduly restrictive of the First Amend-

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[1] Knapp, *Commercial Speech, the Federal Trade Commission and the First Amendment,* 9 Memphis L. Rev. 1, 29 (1978).

[2] Id.

[3] *Roth v. United States,* 354 U.S. 476 (1957)

ment and in contravention of the requirements of this Court's decision in *Virginia v. Pharmacy Board, supra.*[4]

The thrust of the Federal Trade Commission series of cases is that because commercial speech is protected, the least restrictive means to deal with speech that might be misleading must be undertaken. Petitioner submits that criminal prosecution was not the least restrictive means. The very agency which initiated and pursued the prosecution herein, the Postal Service, has at its disposal other means of dealing with matters it regards as deceptive.[5] The Service has various administrative procedures for causing a cessation of using the mails for matters it regards as deceptive, and indeed for giving a targeted business an opportunity to demonstrate, either civily or administratively that the accusation is without merit. In any event, the criminal sanctions undertaken here are significantly restrictive of First Amendment freedoms. The matter has been summed up, "What one ends up with is a remedy which could chill First Amendment speech. However, when the remedy will be applied cannot be predicted in advance because of the lack of a meaningful standard."[6] The upshot is, under the existing application of the statute, every time an ad is merely labeled false or misleading, the effect is to remove the labeled ad from the First Amendment protection given to commercial speech. Clearly, a realistic definition of what constitutes false and misleading advertising is necessary, particularly

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[4] *Standard Oil of California v. FTC,* 577 F.2d 653 (9th Cir. 1978); *National Commission on Egg Nutrition v. FTC,* 570 F.2d 157 (7th Cir. 1977); *Warner- Lambert v. FTC,* 562 F.2d 749 (7th Cir. 1977); *Chrysler v. FTC,* 561 F.2d 357 (D.C. Cir. 1977); *Beneficial Corporation v. FTC,* 542 F.2d 611 (3rd Cir. 1976).

[5] See 39 U.S.C., Secs. 3001-3011, and 39 C.F.R., Secs. 953.1-18.

[6] Knapp, *Commercial Speech, supra,* at 53.

since intent is the gravamen of the offense alleged; and as a practical matter, little analysis is given once the false and misleading label is applied by virtue of the initiation of the criminal action.

Wthout such a limitation any periodical publisher who carried a classified ad soliciting mail inquiries from readers regarding Petitoner's materals could be charged with causing "to be delivered by mail according to the direction thereon . . . any matter or thing whatever to be . . . delivered by the Post Office Department."[7]

II. The Trial Court's Charge To The Jury Dissipating Petitioner's Presumption Of Innocence, The Prosecutor's Prejudicial Remarks Asserting Matters Not Included In The Indictment, And Violations Of Fundamental Fairness Denied Petitioner Due Process In Contravention Of The Holdings Of This Court.

A. Constitutional Presumption Of Innocence Dissipated By Court's Improper Instruction On Intent.

The Court of Appeals overlooked or misapprehended this Court's opinion in *Sandstrom v. Montana,* 442 U.S. 510 (1979). There, this Court reversed a criminal conviction based on a jury instruction which dissipated the constitutional presumption of innocence. In the instant case, the trial judge committed a similar error in giving substantially the identical instruction that this Court struck down in *Sandstrom, supra.*

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[7] 18 U.S.C., Sec. 1341.

After closing argument, the judge instructed the jury on the issues, including intent, aiding or abetting, presumption of innocence, reasonable doubt, and so forth. Thereafter, the Court dismissed the jury at 10:16 a.m., December 4, 1980, to commence its deliberation.

Forty-nine minutes later, at 11:05 a.m. on the same date, the jury reentered the courtroom and returned verdicts of guilty on all ten counts as to both Petitioner and the codefendant.

The Court's charge on intent included the following:

> As a general rule, it is reasonable to infer that a person ordinarily intends all the natural and probable consequences of acts knowingly done or knowingly omitted.

In *Sandstrom v. Montana, supra,* this Court reaffirmed the Fifth and Fourteenth Amendments' due process principle that those charged with crimes can only be convicted upon proof beyond reasonable doubt of every fact necessary to constitute the crime, and nullified an instruction that "the law presumes that a person intends the ordinary consequences of his voluntary acts." This Court held that the foregoing instruction impermissibly shifted the burden of proof and contravened the constitutional presumption of innocence.[8]

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[8] The Court of Appeals, in affirming Petitioner's conviction totally ignored its own decision in *Mann v. United States,* 319 F.2d 404 (5th Cir. 1963) where giving the identical instruction as that given in the instant case was held to be reversible error. The court there said at 410):

> We do hold that it is error to give a charge in a criminal case of this nature, the overall effect of which is to place a burden upon the defendant to produce evidence to overcome a presumption of guilt.

Similarly on remand, the Supreme Court of Montana (*State v. Sandstrom,* 603 P.2d 244 (Mont. 1979) held (603 P.2d at 245):

> Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt . . . . [U]nless we can find harmless error, the conviction must be reversed. To constitute harmless error, we must be able to assent as a Court that the offensive instruction could not reasonably have contributed to the jury verdict. *In considering the instruction, and the fact intent was the main issue in the District Court trial, we cannot make that assertion. The erroneous instruction goes to a vital element of the proof of the crime, namely the intent of the defendant.* . . . [Emphasis added]

The indictment contained numerous inappropriate allegations, some of which were recognized by the trial judge. Numerous parts of the indictment were stricken before the jury was charged and one entire count on conspiracy was dismissed at the end of the government's case. The government relied heavily upon, and emphasized a conspiracy theory in the indictment, its opening statement, and its evidence. It even argued to the trial Court that the mail fraud statute, 18 U.S.C., sec. 1341, was itself a "conspiracy" statute. The Court's directed verdict of acquittal on the conspiracy count, at the end of the government's evidence essentially removed the theory upon which the government's entire case depended. In fact, without the conspiracy theory and count, the government was left with actually charging and arguing that each defendant aided and abetted.[9] With the remain-

[9] The trial judge, at the end of the government's case did express some concern that the two defendants were charged with aiding and abetting each other. Petitioner and codefendant were obliged to proceed to trial

ing theory, there was no principal. The Court of Appeals ultimately concluded that the codefendant was the principal actor. Truly, the government's entire case was the conspiracy allegation. That theory had been emphasized in the opening argument and in reading the indictment to the jury at the start of the case. After the directed verdict of acquittal on the conspiracy count, the remaining process was one of great confusion. In view of this and the short period of time in which the jury deliberated on ten substantive counts and the guilt or innocence of two parties, and in light of the erroneous instruction on intent, it may be inferred that the jury was confused in terms of the innocence of Petitioner. Petitioner and codefendant, the principal actor, had never met, and the nexus between them was doubtful and tenuous, both in fact and in the abstract. The participation, if any, of Petitioner was, as a matter of law, a question of his intent in "causing" matters to be mailed. In view of the government's heavy reliance on its conspiracy theory and the directed verdict on the conspiracy count, the jury was left unaided with a cloudy legal and factual abstraction of Petitioner's guilt. Where there is a difficult and confusing legal issue the judge is under a positive obligation to concisely define the issues the jury should consider.

> Particularly where a difficult legal issue such as intent, which is not precisely defined by the statute, was the subject of the jury's inquiry, the trial court should carefully inform the jury of the law and not

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(Footnote 8, Cont'd)

without ever being informed whom the government charged with perpetration and who aided and abetted. Only on appeal did the government reveal that Segrest was the principal. This coupled with the imposition of having to defend himself in a far away district, further placed Petitioner at an erroneous disadvantage. Venue herein was substantially based on the conspiracy count.

> allow the troubled jury to rely on a layman's interpretation of a superficially simple but actually complex statute (*United States v. Bolden,* 514 F.2d 1301, 1309 (D.C. Cir. 1975).

Similarly, here the issue on the jury's mind was intent, and the Court not only failed to instruct the jury properly on the law, but confused it totally by giving an unlawful instruction dissipating the presumption of innocence. Thereafter, the jury inevitably felt one answer was compelled, mainly conviction, and the constitutional presumption of innocence was lost. The process was not due.

B. The Prosecutor's Remarks Confused and Misled The Jury.

The Prosecutor argued to the jury, and the Court of Appeals that this case involves a "pyramid scheme." However, such a scheme was neither charged in the indictment nor was evidence offered thereon. This argument to the jury further complicated a case already abundant with confusing abstractions and sophisticated legal concepts. In affirming the conviction, the Court of Appeals appears to have overlooked its own decision in *Securities and Exch. Com. v. Koscot Inter., Inc.,* 497 F.2d 473 (5th Cir. 1974). There the Court expressed, with respect to "pyramid schemes," that the parameters of such terms "are largely unrefined in federal law." In that regard, the Court further said (at 477):

> First, even under a traditional approach, under which the essential inquiry is how the interest is viewed in legal and financial circles, the question of whether a pyramid arrangement fell within the definition was still a polemical one . . . .

The jury had heard the conspiracy count read to them and had heard the government's evidence. However, the jury was not instructed specifically as to which evidence it was to ignore after the directed verdict on acquittal regarding conspiracy. It was manifest, in view of the absence of Petitioner's intent regarding the matters alleged in the substantive counts, counts 2 through 11, and the brief period of deliberation, that the jury's verdict was the result of confusion and presumption against Petitioner's innocence.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted.

Respectfully submitted,

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Dated: January 20, 1982

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 81-2018
Summary Calendar

DO NOT PUBLISH

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

SHANO FRANKLIN TAGE,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Texas

(Nov. 9, 1981)

Before AINSWORTH, REAVLEY and RANDALL, Circuit Judges.

PER CURIAM:

Appellant Shano Franklin Tage appeals his conviction on ten counts of mail fraud, 18 U.S.C. §1341, and aiding and abetting, 18 U.S.C. §2. Tage and his co-defendant Cloy Segrest were indicted on one count of conspiracy, 18 U.S.C. §371, and ten counts of mail fraud and aiding and abetting. At the close of the Government's case, the district court instructed a verdict of not guilty as to the

conspiracy count and submitted the remaining ten substantive counts to the jury. The jury found both Tage and Segrest guilty of all ten substantive counts. Tage appeals from the conviction, arguing that the acquittal of the conspiracy charge precludes his conviction for mail fraud and aiding and abetting, and that the Government failed to prove that he committed mail fraud. We affirm.

In the late summer of 1977, Segrest, operating under the name of Habco Sales, placed an advertisement in several newspapers throughout the United States.[1] Segrest placed the advertisement in newspapers after receiving from Tage two booklets, entitled "Insiders Guide to Mailorder Riches" and "Cooperative Income Program." In addition, Tage mailed Segrest, upon two different occasions, two form flyers which Tage authored. The first form flyer was captioned "Earn $180 a Week Addressing Envelopes in the Comfort of Your Own Home"; the second form flyer was captioned "Earn $180 to $480 a Week Working at Home in Your Spare Time." Although both flyers were worded differently, the substance of the flyers was identical: both promised that those who paid the $12 lifetime membership fee would earn a guaranteed $60 per 100 envelopes addressed.

Needless to say, people responded to the advertisements. After mailing requests for further information about the advertisements to Habco in Lufkin, Texas, they received one of the flyers, bit the bait and mailed their lifetime membership fees to the Lufkin address, fully expecting to address envelopes as the flyer led them to believe. But instead of receiving material to do mailings, they received in the mail the two booklets which Segrest received from Tage.[2] From this backdrop of

misinformation, a grand jury indicted Tage and Segrest on one count of conspiracy and ten counts of mail fraud and aiding and abetting.

Tage argues that the Government failed to prove that he violated the mail fraud statute, 18 U.S.C. §1341.[3] Tage contends that since he was acquitted of conspiracy, Segrest's actions in mailing the promotion flyers cannot be attributed to him, and that the Government failed to prove any connection between Tage and the alleged mail fraud. After reviewing the evidence, we hold that Tage's argument lacks merit.

In reviewing the sufficiency of the evidence, we must view all the evidence in the light most favorable to the Government and accept all reasonable inferences and credibility choices that tend to support the jury's verdict. Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887 (1974); Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457 (1942). Mail fraud requires proof of a mailing caused by the defendant, proof that the mailing was for the purpose of executing a fraudulent scheme and proof that the defendant participated in the scheme. United States v. Toney, 598 F.2d 1349, 1351 (5th Cir. 1979). So long as there is sufficient evidence to connect a defendant to the fraudulent scheme involving use of the mails, the defendant need not have done any of the mailing. United States v. Crockett, 534 F.2d 589, 593 (5th Cir. 1976). The defendant need not use the mails; he need only have had a reasonable basis to foresee that his actions would result in the use of the mails. United States v. Georgalis, 631 F.2d 1199, 1206 (5th Cir. 1980); *United States v. Toney,* 598 F.2d at 1355.

The evidence amply supports Tage's convictions of mail fraud. After reviewing the evidence, we conclude

that the jury could reasonably have found that Tage, after supplying Segrest with the promotion flyers and other material, could have clearly foreseen Segrest's use of the mails. Thus, Segrest's action in mailing the promotion flyers can be attributed to him. Furthermore, the testimony of both Segrest and postal inspector Ingersol implicated Tage as the master-mind and source of the scheme. The contents of the promotion flyers that Tage supplied Segrest coupled with Ingersol's testimony that Tage identified Segrest as one of his distributors, reveal Tage's participation in a scheme to defraud. We conclude that the Government offered sufficient evidence to prove that Tage violated the mail fraud statute.[4]

Accordingly, we AFFIRM.

FOOTNOTES

1. The advertisement read as follows:

> $480 Weekly Possible
> Mailing Circulars
> No Gimmicks
> Free Details. Guaranteed.
> HABCO
> Box 678-H Lufkin, Texas 75901

(In one advertisement the address was "Box 678-V".)

2. Page 2 of the booklet "Cooperative Income Program" informs the new lifetime member that there is no profit made in envelope stuffing:

> Because of the way some of the advertising for this business is worded, some people expect that they can get paid a wage for stuffing envelopes or writing addresses on them. There are direct mail companies who hire people to do that, but most of it is done by machine. In any case, it is done in the office of the direct mail company. It would not pay to transport the work across town to have it done. And it certainly wouldn't pay to mail the material to someone to have him do the addressing and stuffing. The postage would easily cost more than the work is worth — even if the envelope stuffer worked without pay.

3. 18 U.S.C. §1341 states in pertinent part as follows:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or de-

> livered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing.
> . . .

4. There is no merit to Tage's argument that since the government failed to prove the fact necessary for the conspiracy count — the existence of an agreement between Tage and Segrest — the government cannot use the same unproven fact to support the aiding and abetting and mail fraud charges. We point out to counsel that the jury may disregard that part of the verdict acquitting Tage of conspiracy and at the same time find Tage guilty of mail fraud and aiding and abetting. "The rendering of inconsistent verdicts has always been an exclusive privilege and prerogative of the jury, and it is not our duty to unravel the ratiocinations of the jury's collective logic." Odom v. United States, 377 F.2d 853, 857 (5th Cir. 1967), *cert. dismissed,* 91 S.Ct. 112, *rehearing denied,* 91 S.Ct. 363 (1970). Thus, the acquittal on the conspiracy charge has no effect whatsoever on the remaining mail fraud and aiding and abetting charges.

APPENDIX B

Statutory Material

18 U.S.C. Sec. 1341

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

18 U.S.C. Sec. 2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.